

REMARKS

Claims 1, 3-10, 12-15 and 17-48 are pending in the present application. Claims 2, 11, and 16 have been canceled without prejudice or disclaimer. The Examiner has acknowledged Applicant's election of Group I, drawn to claims 1-19, Species B, and Subspecies X and Y. Accordingly, Claims 4-7, 10 and 20-48 have been withdrawn from further consideration as being directed to nonelected subject matter.

Claims 2, 11, and 16 have been canceled for the sole reason of advancing prosecution. Applicants, by canceling or amending any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert any of the claims canceled herein or the original claim scope of any claim amended herein, in a continuing application.

Claims 1, 3, 13-15 and 17-18 have been amended. No new matter has been added.

Independent claim 1 has been amended to recite a "system for breast lifting, wherein one or more anchors are fixed to a posture tissue, above a desired nipple level, with two or more readily adjustable suspension members suspended from the one or more anchors and a cradling portion for cradling the breast from below, said cradling portion being integral with or articulated to the two or more suspension members, and having a greater width than the two or more readily adjustable suspension members." Support for amended claim 1 can be found throughout the specification and claims as originally filed. No new matter has been added.

Claim 3 has been amended to depend from claim 1.

Claim 13 has been amended to recite "A system according to claim 1, wherein the one or more anchors and the two or more suspension members are deployable in a non-operable procedure." Support for this amendment appears in the specification and claims as originally filed.

Claim 14 has been amended to recite "A system according to claim 13, wherein the one or more anchors and the two or more suspension members are deployable through stab-incisions formed at a bottom surface of the breast." Support for this amendment appears in the specification and claims as originally filed.

Claim 17 has been amended to recite "A system according to claim 12, wherein each free end of the suspension members is attached to a corresponding anchor." Support for this amendment appears in the specification and claims as originally filed.

Claim 18 has been amended to recite "A system according to claim 12, wherein both free ends of the suspension members are attached to a single anchor." Support for this amendment appears in the specification and claims as originally filed.

No new matter has been added.

In view of the following, further and favorable consideration is respectfully requested.

I. At page 2 of the Official Action, claim 11 has been rejected under 35 USC § 112, second paragraph as being indefinite.

The Examiner asserts that the use of the trademark/trade name Gortex renders

claim 11 indefinite within the meaning of 35 USC § 112, second paragraph, because a trademark or trade name does not identify or describe the goods associated with the trademark or trade name.

Applicants respectfully submit that, in view of the cancellation of claim 11, this rejection has been rendered moot. Accordingly, the Examiner is respectfully requested to withdraw this objection.

II. At pages 2 and 3 of the Official Action, claims 1-3, 9 and 11-19 have been rejected under 35 USC § 102(b) as being anticipated by Vijil-Rosales, U.S. Patent No. 4,372,293.

The Examiner asserts that Vijil-Rosales describes “a system for breast lifting, wherein one or more anchors are fixed to a posture tissue, above a desired nipple level, with one or more suspending members suspended from the one or more anchors and extending through the breast for cradling the breast from below.” See Official Action at page 3.

In view of the following, this rejection is respectfully traversed.

The test for anticipation is whether each and every element as set forth is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); **MPEP § 2131**. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); **MPEP §2131**. The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Amended claim 1 is directed to a system for breast lifting, wherein one or more anchors are fixed to a posture tissue, above a desired nipple level, with two or more readily adjustable suspension members suspended from the one or more anchors and a cradling portion for cradling the breast from below, the cradling portion being integral with or articulated to the two or more suspension members, and having a greater width than the two or more readily adjustable suspension members.

Claim 2 has been canceled without prejudice or disclaimer.

Claim 3 has been amended to depend directly from claim 1.

Claims 9 depends directly from claim 1.

Claim 11 has been canceled without prejudice or disclaimer.

Claim 12 depends directly from claim 1.

Claim 13 depends directly from claim 1 and is directed to a system according to claim 1, wherein the one or more anchors and the two or more suspension members are deployable in a non-operable procedure.

Claim 14 depends indirectly from claim 1 and is directed to a system according to claim 13, wherein the one or more anchors and the two or more suspension members are deployable through stab-incisions formed at a bottom surface of the breast.

Claim 15 depends directly from claim 1 and is directed to a system according to claim 1, being removable at any time.

Claim 16 has been canceled without prejudice or disclaimer.

Claim 17 depends indirectly from claim 1 and is directed to a system according to

claim 12, wherein each free end of the suspension members is attached to a corresponding anchor.

Claim 18 depends indirectly from claim 1 and is directed to a system according to claim 12, wherein both free ends of the suspension members are attached to a single anchor.

Claim 19 depends directly from claim 1 and is directed to a system according to claim 1, wherein respective ends of a cradling portion are fixedly attached to respective ends of two separate suspension members.

As can be seen above, the subject matter is directed to a system and method for supporting and lifting a breast in a controlled manner. The system comprises a cradling portion for supporting a breast from below, suspending members coupled with the ends of the cradling portion and suspended from one or more anchors anchored to a posture tissue above the desired nipple level.

The one or more anchors are in a form of a bolt fixture or a threaded fixture fixed to a rib or collarbone, self-tapping screw, stitching to a muscle, clasp for claspings a muscle, suspending hook bearing or clinging from a rib, all fixed above a desired nipple level with the suspending members adapted to be controllably loosened or tensioned so as to achieve a desired form and position of the breast.

The system according to the present claims is implantable in a minimally invasive surgical procedure. As mentioned above, the position of the breast may be adjusted by simply tensioning or loosening the suspending members. Both the insertion procedure and

the adjustment procedure may be performed with the patient in an upright position. Thus, actual indication regarding the breast's new form and position may be achieved and furthermore, the patient can evaluate and decide the desired form and position of the breast(s) in a real time.

In contrast to the presently claimed subject matter, Vijil-Rosales is directed to an apparatus for the surgical correction of ptosis of the breast and a method of surgery implementing such an apparatus. See Vijil-Rosales at the Abstract. Further, Vijil-Rosales does not teach or suggest a system for breast lifting, wherein one or more anchors are fixed to a posture tissue, above a desired nipple level, with two or more readily adjustable suspension members suspended from the one or more anchors and a cradling portion for cradling the breast from below, the cradling portion being integral with or articulated to the two or more suspension members, and having a greater width than the two or more readily adjustable suspension members. More specifically, the apparatus described in Vijil-Rosales is a physiologically inert mesh formed into an elongated ribbon-like shape that is attached at its lower end to the mammary gland and at its upper end to the clavicle or other element of the skeletal structure or the fascia above the breast. See Vijil-Rosales at column 1, lines 41-45. Accordingly, Applicants respectfully submit that the presently claimed subject matter is not anticipated by Vijil-Rosales because Vijil-Rosales do not teach the readily adjustable suspension members as recited in claim 1.

Accordingly, Vijil-Rosales do not teach each and every element of the present subject matter as required for anticipation under 35 USC § 102(b). Thus, the Examiner is

respectfully requested to withdraw this rejection as to claims 1-3, 9 and 11-19.

II. At page 4 of the Official Action, claim 8 has been rejected under 35 USC § 103(a) as being unpatentable over Vijil-Rosales in view of Bellity (FR 2746298)..

The Examiner asserts that “it would have been obvious to one of ordinary skill in the art...to substitute the hook anchor of Bellity for the anchor of Vijil-Rosales on the system of Vijil-Rosales in order to anchor the system.” See Official Action at page 4.

In view of the following, this rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, the Examiner must satisfy three requirements. First, as the U.S. Supreme Court very recently held in *KSR International Co. v. Teleflex Inc. et al.*, *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007), “a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. ...it [may] be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. ...it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does... because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” (*KSR, supra*, slip opinion at 13-15.) Second, the

proposed modification of the prior art must have had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *Amgen Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991). Lastly, the prior art references must teach or suggest all the limitations of the claims. *In re Wilson*, 165 USPQ 494, 496 (C.C.P.A. 1970).

Applicants respectfully submit that a *prima facie* case of obviousness has not been established because, whether taken alone or in combination, neither Anderson or Tormala et al. teach or suggest each and every limitation of the presently pending claims as required by *In re Wilson*.

As amended independent claim 1 is directed to a system for breast lifting, wherein one or more anchors are fixed to a posture tissue, above a desired nipple level, with two or more readily adjustable suspension members suspended from the one or more anchors and a cradling portion for cradling the breast from below, the cradling portion being integral with or articulated to the two or more suspension members, and having a greater width than the two or more readily adjustable suspension members.

Claim 8 depends directly from claim 1 and is directed to a system according to claim 1, wherein the anchor is a suspending hook bearing or clinging from a rib.

In contrast, Vijil-Rosales is directed to an apparatus for the surgical correction of ptosis of the breast and a method of surgery implementing such an apparatus. Vijil-Rosales describes an apparatus consisting of a physiologically inert mesh being formed into an elongated ribbon-like shape, and the mesh being attached to its lower end to a

trocac point needle or to a cutting edge needle. Vijil-Rosales does not teach or suggest the anchor being a suspending hook bearing or clinging from a rib. Therefore, Applicants submit that Vijil-Rosales does not teach or suggest every element of the presently pending subject matter.

Bellity do not remedy the deficiencies of Vijil-Rosales. Bellity is directed to a support prosthesis with a cover to enclose the breast and at least one section for fixing the prosthesis in the body. See Bellity at the Abstract. Like Vijil-Rosales, Bellity do not teach or suggest a system for breast lifting, wherein one or more anchors are fixed to a posture tissue, above a desired nipple level, with two or more readily adjustable suspension members suspended from the one or more anchors and a cradling portion for cradling the breast from below, the cradling portion being integral with or articulated to the two or more suspension members, and having a greater width than the two or more readily adjustable suspension members. In contrast to the presently claimed subject matter, Bellity relates to an internal prosthesis for retaining the position and form of a breast comprising a girdle to completely enfold the breast and means for fixing the girdle within the body. The device described by Bellity resembles a brassiere and is pre-formed to the desired shape of the breast and then implanted around the breast tissue, wrapping it so that the front top portion of the "brassiere" is attached to the thoracic wall. Also, in contradistinction, Bellity does not disclose a controllable system for changing the shape and the position of a breast nor does it allow performing the implantation procedure in a minimally invasive manner to a person in an upright position. Accordingly, neither Vijil-Rosales nor Bellity, either taken alone or in

combination, recite all the elements of the pending claims, and therefore do not render the pending claims obvious within the meaning of 35 USC § 103(a). Accordingly, the Examiner is respectfully requested to withdraw this rejection.


CONCLUSION

Applicants assert that the claims are in condition for immediate allowance and early notice to that effect is earnestly solicited. Should the Examiner deem that any further action by Applicants' undersigned representative is desirable and/or necessary, the Examiner is invited to telephone the undersigned at the number set forth below.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

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